IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.877 OF 1990

The State of Maharashtra ...Appellant
Vs.
Shree Warna Sahakari Sakhar Karkhana Ltd.
Warnanagar,Kolhapur ...Respondent

Mr.K.K.Tated,A.G.P. for the Appellant
Ms S.A.Mudbidri for the Respondent.

CORAM: A.S.OKA, J.
DATED: MAY 2,2006.

ORAL JUDGMENT:

1. The submissions of the Advocates for the parties were heard on 4th April 2006 and today the First Appeal was kept for dictation of the Judgment.

2. The Appellant-State of Maharashtra has taken exception to the impugned Judgment and Award dated 26th March 1990 passed by the learned Additional District Judge in a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act).

3. The Award under section 11 of the said Act was made on 24th November 1983. By the impugned Judgment and Award, additional compensation has been ordered to be paid to the Respondent-claimant.

4. Placing reliance on the decision of a Division Bench of this Court as well as certain decisions of the Apex Court, the learned A.G.P. for the Appellant submitted that no claim

was filed by the Respondent in response to the notice under section 9(3) (4) of the said Act and therefore in view of unamended section 25 of the said Act, the Respondent was not entitled to enhancement in the compensation.

5. The learned Advocate for the Respondent submitted that in fact a reply was filed to the notice under section 9(3) (4) and the said reply is at Exh.35. It is submitted that in view of the said reply, there is no merit in the contention raised by the learned A.G.P.

6. I have considered the submissions. It is not in dispute that the notice under section 9(3)(4) of the said Act was duly served to the Respondent. In examination-in-chief, Shri Dhanapal Chougule who was examined as the only witness on behalf of the Respondent did not depose as regards any claim made in response to the said notice. In the cross examination, he stated that a reply at Exh.35 was given to the said notice. Perusal of the reply at Exh.35 shows that the only contention raised therein is that an objection has been filed before the Special Land Acquisition Officer for modification of the line of alignment. There is no claim whatsoever made for compensation. Thus, this is a case where no claim is made in response to the notice under section 9 (3)(4) of the said Act.

7. In the present case, 21st November 1983 is the date of

Award under section 11 of the said Act. Under unamended section 25 of the said Act, a claimant was not entitled to claim compensation in a reference under section 18 of the said Act at a rate more than what was claimed in response to the service of notice under section 9(3)(4) of the said Act. The embargo was removed by Act No.68 of 1984. The Act No.68 of 1984 amended the section 25 which was brought into force with effect from 24th September 1984.

8. The Apex Court in the case of Special Land Acquisition Officer Vs. B.V.Reddy and Sons reported in (2002) 3 S.C.C. page 463 dealt with the question which arises for consideration in this Appeal. The Apex Court was dealing with an Award under section 11 of the said Act made between 31st September 1982 and 24th September 1984. In case of such Award, the Apex Court held that the case will be governed by unamended provision of section 25 of the said Act. In view of the decision of the Apex Court, the Respondent could not have claimed any enhancement in compensation as no claim was made in response to the notice under section 9(3)(4) of the said Act. Only on this ground the Reference court had no power to grant enhancement. Hence, Appeal must succeed.

9. Hence, I pass the following order :

. The impugned Judgment and Award dated 26th March 1990 is quashed and set aside. L.A.R.no.8 of 1984 stands dismissed.

There will be no order as to costs.

Judge.